

**IN THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION**

UNITED STATES OF AMERICA)	
v.)	CRIMINAL NO. 96-00184-KD
DARREL PRENELL GIBBS,)	
Defendant.)	

ORDER

After due and proper consideration of all portions of this action deemed relevant to Defendant Darrell Prenell Gibbs' Motion to Proceed Without Prepayment of Fees (Doc. 267), the Report and Recommendation of the Magistrate Judge made under 28 U.S.C. § 636(b)(3) is **ADOPTED in part**, as the opinion of this Court, as follows:

That portion of the report and recommendation wherein the Magistrate Judge recommends deduction of the filing fee on appeal from the defendant's prison account, is **stricken**. 28 U.S.C. § 1915(b)(1) requires deduction of filing fees from a prisoner's account upon denial of a motion to proceed in forma pauperis. However, 28 U.S.C. § 1915(b)(1) does not apply to an appeal of a decision denying a post-trial motion in a criminal action. See Anderson v. Singletary, 111 F.3d 801, 803 (11th Cir. 1997) ("... the filing fee provisions of the PLRA apply to prisoners who bring a 'civil action' or appeal a judgment in a 'civil action or proceeding.'") (citing 28 U.S.C. § 1915(a)(2), (b)(1)).

That portion of the report and recommendation wherein the Magistrate Judge recommends that this court certify that this appeal is not taken in good faith in that the Defendant has failed to show that he has a non-frivolous issue to be presented to the Eleventh Circuit Court of Appeals, is **adopted**. Accordingly, the court so **CERTIFIES** and therefore, Defendant Gibbs' Motion is **DENIED**.

DONE this the 30th day of December, 2008.

s/ Kristi K. DuBose
KRISTI K. DuBOSE
UNITED STATES DISTRICT JUDGE